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UNITED STATES SUPREME COURT

Peter F. Tinkham, et al.
v.
Doreen R. Kelly, et al.
(Civil Action No. 06-1806)

PETITION FOR A WRIT OF CERTIORARI

(To the U.S. Court of Appeals, First Circuit)

Petitioners: Peter Francis Tinkham, Pro se
Juliet Baird Alexander, Pro se

Post Office Box 92
Weld, Maine 04285

Ouestions Presented For Review

1. Is gender neutrality in language as adopted and employed by the federal judiciary a valid exercise of judicial power or prima facie evidence of its irremediable bias in gender-specific cases?

2. Is the extermination of the male pronoun in all court documents a valid exercise of judicial power or an important step in the infantilization of American jurisprudence?

3 Is the formal mutilation of the English language for its crime of distinguishing between men and women a valid exercise of judicial power or a naïve and outrageous endorsement by the federal courts of radical feminism and queer theory?

List of Parties

Petitioners

Peter Francis Tinkham	Father
Juliet Baird Alexander	Mother
Samantha Louise Tinkham	Minor child

Respondants

Doreen R. Kelly Barry L. Mintzer, Esq. Jean Curtis Loud Robert L. Doyle Donna Kyed Margaret Verret Joan Bernheimer Judi Alberton Claire Jackson	Defendant employees and associates of the Sharon Public Schools, sued as individuals.
Erin L. Senges Barbara Hawkes-Sullivan Barney Keezell Stephanie Thomas Erica Cohen Kenneth Pontes	Defendant employees of the Masschusetts Department of Social Services, sued as individuals.

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5. Constitutional Complaint Too Confusing
(See Page 8/9, pp#15)
Davis v. Ruby Foods, Inc. 269 F.3d 818, 820 (7th Cir. 2001)

Citations of Opinions and Orders

1. Order of Court, U. S. Court of Appeals for the First Circuit Civil Action No. 06-1806 (Entered July 10, 2007) (verbatim text in petition appendix)
"It is ordered that the petition for rehearing and the petition for rehearing en banc be denied."

2. Judgment, U. S. Court of Appeals for the First Circuit Civil Action No. 06-1806 (Entered April 11, 2007) (verbatim text in petition appendix)
"The appellees' motion for summary disposition is granted. The judgment of the district court entered on March 20, 2006 is affirmed. "

3. Memorandum and Order, U. S. District Court for the District of Massachusetts Civil Action No. 05-10470-MLW (Entered March 20, 2006) (verbatim text in petition appendix)
1. "The Sharon Schools defendants' Motion to Dismiss (Docket No. 19) is ALLOWED without prejudice. 2. The DSS defendants' Motion to Dismiss (Docket No. 53) is ALLOWED without prejudice. 3. The plaintiffs' Motion

for Entry of Default Judgment against the Sharon School defendants(Docket No. 25) is DENIED. 4. The plaintiffs' motions for entry of default judgment against the individual DSS defendants (Docket Nos. 26,27,28,29,30 and 31) are DENIED.

4. Report and Recommendation, U.S. District Court for the District of Mass Civil Action No. 05-10470-MLW (Entered February 15, 2006) (verbatim text in petition appendix)
"To the extent that the complaint asserts violations of plaintiffs' constitutional rights...those claims may be barred if Mr. Tinkham and Ms. Alexander failed to exhaust certain state court remedies" "....We cannot be sympathetic to a party who elects to forego the hearing provided him and then complains he received none. Where a sufficiently timely hearing is available to plaintiffs, they cannot bootstrap themselves into federal court by failing to seek it." "For the foregoing reasons, the Court RECOMMENDS that the District Court ALLOW the defendants' motions to dismiss without prejudice to the plaintiffs amending their complaint with a lawyer to represent Samantha and perhaps a lawyer to represent themselves. Additionally, the Court RECOMMENDS that the District Court DENY the plaintiffs' motions for default judgment."

Statement of Basis For Supreme Court Jurisdiction

The date of the appellate judgment was April 11, 2007 with the order of court respecting rehearing on July 10, 2007. The order granting an extension of time in which to file a writ of certiorari was signed by Justice Souter and extended the time to file sixty days to and including December 7, 2007.

Since mandatory appellate review was abolished in 1988, there doesn't appear to be a statutory provision that says this Court must review this case. Petitioners contend, however, that the First Circuit Court of Appeals has so far departed from the accepted and usual course of judicial proceedings while sanctioning such a departure by the lower District Court for the District of Massachusetts as to call for an exercise of this Court's supervisory power.

They further contend that gender neutrality, upon which question their petition is based, is a matter of compelling public importance with ramifications that will cloud the constitutional horizon of every family in this country. This Court should muster its discretion and its perspicacity to face this colossal error in judgment boldly; now, while it can still be corrected.

Statement of the Case - Jurisdiction

The District Court had subject matter jurisdiction in this case pursuant to:

1. 18 U.S.C.A, Section 1961 et seq., because this is an action for damages and other appropriate relief arising under the Racketeer Influenced and Corrupt Organization Act. (RICO).

2. 28 U.S.C.A.. Section 1331, because this case also arises under the Constitution and the laws of the United States.

3. 28 U.S.C.A., Section 1343, because this action seeks redress for violations of the Due Process and Equal Protection provisions of the United States Bill of Rights.

4. 42 U.S.C.A., Sections 1983, 1985, &1986, because this action seeks redress and damages for violations of the 1st, 3rd,4th, 5th, 6th, 9th, and 14th Amendments to the Constitution of the United States.

5. 28 U.S.C.A., Section 1232, because there is diversity of citizenship and this was a civil action involving, exclusive of costs, a sum in excess of $75,000.00.

(The question of the District Court's original and subject matter jurisdiction was argued in the appellate brief, located in this petition's appendix (at page 20) for reference both to the substantial federal questions raised and the case law that supports these questions.)

The constitutional provisions that are implicated comprise almost the entire Bill of Rights which should not be surprising since, as this Court is well aware, when a state actor knocks over one foundational right with enough gusto, the rest of them can come tumbling down. The main ones in this case are the 1st, 4th, and 5th Amendments to the U. S. Constitution and they are all set out verbatim in the appendix at page 18.)

Statement of the Case - Facts

1. In March of 2005. Petitioners filed a complaint in federal district court arraigning 15 defendants for the constructive theft of over $175,000.00 ($50,000.00 belonging to their minor child.) They alleged that nine public school employees engaged in a two- and- a-half year RICO enterprise to bring about this theft with predicate acts ranging from simple mail fraud and invasion of medical privacy to bribery, extortion, conspiracy and obstruction of justice.

2. When this effort did not achieve the desired result, they mounted a malicious prosecution of Petitioners for child abuse, aided by six state social workers whose unbridgeable commitment to protect children from their parents includes the suppression of parents' constitutional rights. These defendants were abetted in their quest to arraign Petitioners on fake charges of child abuse by a state statute that effectively repeals the 4th and 5th Amendments to the U. S. Constitution and gave the compulsory and tyrannical decrees of these six undereducated and overpaid social workers the force of law.

3. All fifteen defendants were so confident of success in their respective RICO endeavors that they didn't even bother to cover their actions or their motives with the barest of fig leaves. That's because in the Commonwealth of Massachusetts, school employees, social workers and Democrats are a protected class, immune from prosecution, no matter what they do.

4. (Since the questions presented for review in this petition concern the administration of the case once it arrived at federal court, the rest of the specific facts of the underlying claims up to the commencement of suit, which are concisely stated in the appellate brief's Statement of Facts, are set out in the appendix to this petition at page 22)

5. Suffice it to say, that by the time Petitioners' allegations of unabashed criminality and moral turpitude reached the federal courthouse in Boston, you would need at least one hand to count all of the constitutional pillars that had been knocked down in the dedicated pursuit of defendants' anti-parent, anti-

family agenda. Two-and-a-half years later, when the First Circuit Court of Appeals summarily dismissed the case, you would need the other hand to count all of the rules of federal civil procedure that had been bent, stretched, turned on their heads or invented out of whole cloth

6. Of course, you would need another pair of hands altogether to keep track of all of the Supreme Court decisions that had been trumped or ignored in order to maintain the polite legal fiction that, at least in the First Circuit, defendant rights are presumptively superior to plaintiffs. Especially, when defendants are school personnel and social workers and plaintiffs are "ordinary" families with constitutional claims.

7. One need only examine the docket entries in this case, including the transcript of the magistrate judge's off-with-their-heads performance on the bench, to produce the rational conviction that the entire First Circuit is infected with a virulent form of pro-state, anti-family bias, ratified and intensified by their adoption of gender neutrality. As a result, a family's claims of wrongdoing by state actors turn not upon the facts or the law which form the foundation upon which they rest, but upon the Court's preconceived view as to their antecedent improbability.

8. Certainly, no judge bothered to read the pro se complaint in the light most favorable to its authors, (if they bothered to read it at all). Thus, they were able to conclude that the allegations of wrongdoing in it may be justly suspected to have never happened.

9. Petitioners' utterly and deliberately misinformed magistrate judge whose factually erroneous report and recommendation forms the basis for all subsequent review, managed to maintain this astounding status ante quo by indulging in a game of kick-the-can. In this instance, the can was the rulebook of federal civil procedure.

10. First, she absolved the six social workers who were objectively in default because their lawyer (an assistant attorney general) waited sixty days after their answer was due to file their Rule 12 Motion to Dismiss. She did this by inventing a new rule of civil procedure that said when a defendant, who has refused his waiver of service, affirmatively evaded service by a constable, lied under oath about notifying plaintiff of his appearance of counsel, lied under oath about prior communications with plaintiff and forged a document crucial to his defense, declines to answer or otherwise defend, it is the fault of the plaintiff who did not return his non-existent phone calls.

11. Then, she absolved the nine school employees of their objective default by determining that their Rule 41/b Motion to Dismiss was really a Rule 12/e Motion for a More Definite Statement in disguise. Notwithstanding that neither motion is a responsive pleading nor a permitted defense, she urged the District Court to indemnify these nine defendants from the justifiable consequences of either their ill -conceived motion strategy or their culpable ignorance of the requirements of Rule 12. (See Cases Cited, Page V, #1)

12. Next, she turned to the DSS Rule 12/b Motion to Dismiss and was so enthusiastic about its irrelevant

defense of failure to exhaust administrative remedies that she climbed onto defendants' bandwagon, waved their forged offer of a fair hearing in Petitioners' faces and lectured Petitioners on habeas corpus as if they were adult criminals looking to get out of jail or landowners whose property had just been taken by eminent domain without compensation.

13. Never mind that her interesting take on Exhaustion had been emphatically rejected by the Supreme Court almost a quarter of a century earlier or that both the Magistrate Judge and the District Court had been apprised of this fact, not once, but three times, twice in writing. (See Cases Cited, Page V, #2.)

14. Then, in her analysis of the school employees' Rule 41/b aka Rule 12/e Motion to Dismiss, she was in heartfelt agreement that Petitioners have indeed violated Rule 17/c by representing their minor child. Never mind that Rule 17/c not only does NOT bar parents from representing their children, it says the exact opposite. Three Supreme Court decisions, confirming Petitioners' right to represent their daughter as a third party plaintiff were confidently and quietly consigned to oblivion. (See Cases Cited, Page V, #3.)

15. She also concurred with the "defense" that the complaint is too long and too confusing to permit nine school defendants to answer it. Never mind that she had already recommended that the District Court allow a mutually exclusive motion to dismiss by the six social workers who not only perfectly understood the complaint, they formulated five specific, if legally frivolous, defenses to every one of its claims. Never mind that pro se complaints that clearly delineate

bona fide constitutional claims should be fairly read, not weighed, and should be permitted even if they are too long. (See Cases Cited, Page 1, #3, #4.)

16. Then there is the matter of the Magistrate Judge's improper reliance on DSS Defendants' bogus offer of a "fair hearing", submitted outside the pleadings, which converted her consideration of Petitioners' case to automatic summary judgment proceedings under Rule 12 and Rule 54. This was accomplished without the slightest advertence to the rules governing summary judgment; without even the courtesy of notice to Petitioners.

17. Lastly, she makes no mention whatever of Petitioners' request for injunctive relief from a truly invidious state statute that has effectively eliminated parents' 4th and 5th Amendment rights in the Commonwealth. If there was a federal rule that excused this judicial indifference, it surely would have been given pride of place in her report and recommendation.

18. Thus, Petitioners' right to a jury trial of the contested, genuine factual issues in their constitutional case was buried in a cloud of procedural dust by a magistrate judge without the slightest bow to the standards of review, to the relevant federal rules, or to the Black Letter Law that cut the ground out from under the eight speculative defenses that her district court superior, without comment, affirmed. As a result, the District Court entered summary judgment in favor of all defendants when he could not produce a single, undisputed fact upon which any defendant was entitled to it as a matter of law.

19. These facts have been drawn from the Magistrate Judge's performance on the bench, her report and recommendation and the District Court's memorandum and order to direct this Court's attention to the underlying questions that are fairly contained within the three questions presented for review, namely:

A. What conclusions about the impartiality of the federal judges in Boston, to say nothing of their grasp of legal precedent, may be drawn from such a set of acknowledged facts?

B. Was impermissible judicial bias against pro se family claims, ratified and extended by the federal judiciary's capitulation to gender neutrality in all of its perfidious forms, responsible for the kind of treatment Petitioners received during the administration of their case? Or something even more irremediable?

C. What is the foundation of family dignity and privacy in light of the assault on the English language by the no-such-thing-as-gender zealots of the state and federal bench?

D. Or, more precisely, what is the legal basis for any parental rights in light of the malleable language invented thus far by the federal courts?

20. Perhaps, because their magistrate judge was black and female, she had at least three metaphysical motives for this reverse, and politically correct bias. Perhaps, Petitioners' pro se ineptitude contributed to the intellectual pandemonium evident in her report and recommendation. Be that as it may, it is, nevertheless, certain and true that even if Petitioners had

been poor and black AND possessed of the legal talents of an Oliver Wendell Holmes, they would have gone down all the same under such a stroke and in such case. Quod erat demonstrandum.

ARGUMENT (Reasons for granting the writ)

1. Gender Neutrality Is A Treacherous Shortcut, Dangerous To Liberty, And should Be Declared Void Without Reference To Cases

Federal judges who would never dream of wearing someone else's clothes, apparently have no qualms about wearing someone else's opinions. It is incontrovertible that the entire federal judiciary is now wearing the mental-hand-me-downs of the "ungendered', viz., socialists who for political reasons have never accepted gender differences; lesbian feminists who consider their feminine gender either a cross or a disease; and, queers and the "transgendered" who play-act gender, even on the operating table.

Permit Petitioners to observe that a good judge, like a good scientist, has to have only one talent: The ability to be astonished at the proper time. Since it was the explicit will of Congress that the civil plaintiff be the vehicle by which constitutional rights are vindicated, this petition for a writ of certiorari has arrived at the threshold of this Court not a moment too soon.

There are in it three issues that ought to astonish every member of this Court: First, there is a state agency running constitutionally amok in the Commonwealth of Massachusetts; Second, the First Circuit Court of Appeals doesn't intend to do a thing about it; Third,

both of these anomalous facts are the logical fall-out of the attempted murder of an important legal principle, viz., Pater Familias, which happens to pre-date our Federal Constitution by about three thousand years.

This legal principle is so firmly embedded in American jurisprudence, in culture, and in LANGUAGE, that its enemies, the socialists, the radical feminists, and the even more radical queers, recognized from the beginning that in order for their perverse agenda to prevail, they would have to remove the male gender and the inherent authority of the heterosexual male from the public forum, mainly because heterosexual males, as a group, disapprove of all three of them. To accomplish this, they would have to weaken the principle of Pater Familias decisively. Who would have thought that their most reliable and enthusiastic allies would be federal judges?

Usually, when someone (or, in this case, something, viz., the male pronoun) turns up dead, prosecutors always ask: Qui Bono? Who benefits? Who indeed. Certainly not the American people who never gave federal judges the dispositive authority to fool with the English language. Certainly not Petitioners seeking to vindicate precious family rights and, by extension, all cases closely predicated on gender-specific issues, who for the last decade have been unable to get to first base in the First Circuit.

2. Petitioners Lash Themselves To The Mast of Reason.

Of course, the question upon which this petition for certiorari is based is: Why not? Why is it that a pro se plaintiff has statistically the same chance of putting

his constitutional claims before a jury in the Federal District of Massachusetts whether or not he files a complaint? Certiorari should be granted because the answer to this question, ex vi termini, has staggering implications for every family in the Commonwealth and for every judge sitting on a federal bench.

Pater Familias is one of the ancient and foundational pillars upon which our civilization happens to be based. Put an axe to it and the reverberations will shake this country from top to bottom. The insult to the Federal Constitution from the federal judiciary's efforts to dismantle Pater Familias from the inside, from the language itself, will, in the end, dwarf Petitioners' constitutional complaint like Arcturus dwarfs the sun.

The weapon utilized in this crime is "gender neutrality", a term Petitioners use with repugnance because it is a legal blasphemy, a betrayal of the U. S. Constitution and a practical apostasy from the canon of impartial justice. It is an intellectual swindle that has bamboozled judges, and lawyers who would like to be judges, into believing that gender neutrality is gender impartiality.

Nothing could be further from the truth. It is gender perfidy and gender bias in favor of "ungender". Since it was adopted and employed by the federal judiciary, it has been a force multiplier in the radical dismemberment of the American family, which is the only social unit (with the exception of the Catholic Church) that has a gender-specific hierarchy.

3. Praise The Administration Of Justice But Pass The Ammunition.

Not only are the Federal Rules of Civil Procedure revised or invented on the spot in the Federal District of Massachusetts, the English language, in se, the epistemological foundation upon which both sovereign reason and justice depend, is now, in the minds of federal judges everywhere, a notion perpetually revisable. ANYTHING can be permitted and the English language re-arranged to justify it.

Today the judiciary has decided that gender differences do not exist, so say hello to sodomy, gay marriage, and infanticide. Today, the First Circuit has decided that the 4th Amendment no longer applies to families. What's next? The federal courts' enthusiastic endorsement of animal/human hybrids? Tomorrow, where this apocalyptic rationale will take the country is anyone's guess.

Language is now nothing more than a legal frumpery whereby anything, especially all that was condemned by the most serious reflection and accumulated experience of many generations, can be made to assume an entirely different character. With the stroke of a grammarian's (or a law clerk pretending to be a grammarian's) pen, inconvenient impediments of law, fact, logic or morality can be, and are being, eliminated, particularly in the First Circuit.

4. When The Canary Keels Over, It's Time To Get Out Of The Mine.

The homosexual socialists, with the cooperation of the

federal bench in Massachusetts, have covered a lot of ground in the last decade without a mandate from anyone and, most certainly, without the public's approval or permission. Thanks to their relentless efforts, Pater Familias is now brain dead and on life support. It is alarmingly clear from the facts in Petitioners' case that, in order to kill it outright, both of them together are willing to bury, and are quite capable of burying, even the most firmly established constitutional amendment.

There is no end to this chain of causation until it terminates in the dismemberment of the U. S. Constitution amendment by amendment. Although it will take time for its catastrophic effects to be fully recognized, gender neutrality, as adopted and employed by federal judges, is the death knell of our civilization as we know it, civilization as God created it, civilization as the U. S. Constitution ennobled it.

It is capital to the understanding of this petition that two historically vindicated truths be grasped. The first is that the habitation of liberty in NOT in the individual OR in the state. It is in the family. Therefore, the federal courts, whose sole obligation is to safeguard liberty from encroachment or extermination by the state, have a duty to protect and not to persecute the family.

This means to safeguard the family from its primordial definition to its gender-specific hierarchy to its raison d'etre, viz., the raising of morally conscious citizens who will form the state in order to protect THEIR life, THEIR liberty, THEIR property. This vocation of the citizen to obtain for himself and his family, life, liberty and property is what the Declaration of Independence means by the pursuit of happiness.

The second truth to be grasped is that the family is antecedent to the individual and to the state. This means that no individual or collection of individuals (i.e., the state) has any business interfering with, disrupting, or even regulating family life unless and until it can be proved in a court of law that a particular family cannot or will not regulate itself. Any society that plays fast and loose with the family is taking, in the words of the great Saint Augustine: Magni gressus praeter vitam, viz., Giant Steps on the Road to Extinction.

Both of these noble truths appear to have been lost not only on the federal bench but also on the state legislature of Massachusetts, whose best legal minds cannot decide if Pater Familias is a root vegetable or a vestigial organ. Their effort to remove it began in 1999 with the enactment of MGL Chapter 119, Sections 51A and 51B which silently repealed the 4th Amendment to the U. S. Constitution and effectively hobbles citizens in the exercise of the rest of their constitutional rights.

5. Barbarism In The Form Of Humanism.

This statute, purportedly enacted in response to the usual media hysteria over one or two families in crisis, summarily swept from the books statutes of long standing that not only recognized the primacy of Pater Familias, they enshrined it in their language: No one was to interfere with family life until it could be shown that the minimum required for food, clothing, shelter, and moral guidance was manifestly NOT being provided.

Instead of protecting the life, liberty and property of the family, this replacement statute is a direct threat to

the life, liberty and property of every family in the Commonwealth. It not only calls for the unconstitutional coercion of certain citizens under penalty of fine and imprisonment to report their suspicions of child abuse to the state, it has created an agency of the executive branch that now has the power to act as policeman, prosecutor, trier of fact, sentencing judge, appeals court, prison warden and executioner. Naturally, this power has gone to the heads of its employees like a glass of wine goes to the head of a starving man.

The authority of this so-called "social service" agency is total and all-embracing. Within it, all resources available to the body politic merge. It covers every facet of the lives of families within the Commonwealth and embraces all psychological jargon, however dangerous, useless or irrelevant. Its authority is subject to no checks or controls.

Circumscribed by no private preserve of jealously guarded individual rights, it is free and independent, overriding and unfettered. Its stated policy of recourse to the courts is a sham and a deceit and it represents the greatest physical and legal threat to the family since the establishment of the Star Chamber in Great Britain.

Thanks to this conflating of the executive and judicial branches of government, all by itself a violation of the Separation of Powers doctrine, the families who live in Massachusetts are not marching, they are sprinting into the arms of the octopus state. The fact that this supremely unconstitutional law has been on the books for over seven years in a state that was mother and

father to the Constitution in the first place is a crying indictment not only of the dolts in the legislature, but also of the dolts who are sitting at the bar and on the bench.

Every case involving the constitutional rights of fathers (read heterosexual males) has been swept under their august noses into the dustbin of history. It is the triumph of gender neutrality which has infected the Emperor of Reason and removed all of his clothes.

6. Social Service Agencies Are So Egregious A Misconstruction Of The Constitution As To Constitute Complete Indifference To It.

Although the family is the Constitution's only Department of Health, Education and Welfare, no one is arguing that the state does not have broad powers to set up as many social service agencies as its heart desires. Owing to the prevailing and ever more wretched distance that the Commonwealth has put between itself and the U. S. Constitution, however, this statement needs to be clarified.

Its officials are, after all, no more exempt that anyone else from the corrupting effects of uncontrolled power. There is no guarantee of exceptional candor, ethical refinement or habits of intellectual integrity. What they do not have the power to do, at least not while the Supreme Court retains its loyalty to the Constitution, is to allow the executive branch to usurp the judicial.

There are laws on the books in every state prohibiting and punishing the crime of robbery but there are no laws anywhere in this country compelling anyone who

has witnessed a robbery or thinks he has witnessed a robbery to report it. It does not require much imagination to foresee the constitutional pandemonium that would result if citizens, under penalty of law themselves, were obliged to report any action even remotely resembling a robbery.

Suppose, for purposes of illustration, that a law mandating the report of possible robberies also set up a separate agency of social workers to which these robberies and attempted robberies were to be reported on the theory that shopkeepers and mugging victims must be in need of therapy. And, while these social workers were dispensing their peculiar brand of "therapy", this law also empowered them to conduct police investigations on the side.

What could be more economical for the state? Without a warrant or informed consent or even an exigent circumstance (save and anonymous "tip") these social workers can now walk in and out of peoples' houses, searching and seizing at will. On the grounds that, like medicos in combat, they are just out there to take care of the wounded.

Imagine, then, that this law gave these social workers prosecutorial powers and established a system of Drop-A-Dime whereby even non-mandated citizens were encouraged to phone in accusations of robbery with complete immunity from prosecution for malice. It also permitted the creation of a public central file on "reported" robbers or reported imaginary robbers which would be regularly updated with information legally coerced from their family, friends, and physicians.

Lastly, in order to be consistent and truly overthrow the distinctions between the three branches of government, this statute would enable these same social workers to adjudicate the guilt of their robber "clients" (who will never see the inside of a courtroom) and to sentence them to a service plan that is intended to strip them of what is left of their dignity, their autonomy and, if its prescriptions and its proscriptions are not carried out TO THE LETTER, their freedom.

Should these felons be foolish enough to request a "fair hearing" early on, they will find it indefinitely postponed. If they are even more foolish as to think the federal courts will allow them to vindicate their constitutional complaints, they will find themselves, at least in the First Circuit, dismissed for their failure to consult with the social workers who victimized them in the first place.

7. Great Britain May Have Abolished The Star Chamber in 1641, But It Is Alive And Well In The Commonwealth Of Massachusetts.

Factor all these activities into your judicial craniums and you will have a pretty good idea of how Massachusetts' General Law Chapter 119, Sections 51A and 51B, and, of course, the agency they created, the Massachusetts Department of Social Services, operate in the Commonwealth.

Petitioners have, in their original complaint, documented the outrageous methods by which this constitutional nightmare was imposed on them and they have documented it in what their magistrate judge has referred to as 'vexatious' detail. Factor in the judicial organ failure of gender neutral language and

you will have some idea how gender bias and gender perfidy have contributed to the emasculation and defenestration of Petitioners' constitutional complaints in the First Federal District.

Now, just because none of the five judges who purportedly heard (or read) this case makes any mention of Petitioners' request for injunctive relief (the 4th cause of action in their complaint and set out on Page 32 of the appendix to this petition) does not mean that the issue of a state agency acting constitutionally insane was not brought up from the first page of their complaint. It is also front and center of their drastically reduced, amended complaint.

Prescinding from the magistrate judge's grand mal seizure on the bench when she found pro se plaintiffs seeking to vindicate rights she thought had been effectively repealed in her jurisdiction, to the Orwellian circumlocutions of the District Court who regurgitated her wildly inaccurate understanding of both the facts and the law in their case, Petitioner's have known from the beginning that the violation of their constitutional rights was not a matter of interest to either of them.

Petitioners were not referencing made-up constitutional rights like the inalienable right to buggery or infanticide. They were not instancing new zones of privacy or constitutional penumbras of any kind. They were complaining about the violation by state actors of rights so basic that an intelligent child of twelve would have recognized them, viz.: The right to be free in their own home from warrantless searches and seizures; The right to freely dissent from school policy without having a malicious prosecution for child abuse hung around

their necks; The right to protest their innocence in a duly constituted court of law.

Petitioners know that this Court is not interested in righting individual wrongs. They know that error, confusion, incompetence and bias, even if proved, will not entitle them to a writ of certiorari. However, to deny their petition on the grounds that an important legal principle is not involved, is not only to victimize them thrice, it is to leave American families dangerously vulnerable to these Bureaucrats of the Universe who wouldn't recognize a constitutional right if it rose up and bit them.

8. If There Is One Fixed Star In A Layman's Constitutional Horizon, It Is That No One Discerning A Faction Is Obliged To Appear Before It For Judgment.

This conditional working hypothesis was constructed BEFORE Petitioners realized that all federal judges, regardless of their title, are now, and have been for over a decade, irremediably biased against any and all cases before them that involve gender-specific or parental (read heterosexual male) issues of any stripe. When the federal judiciary voluntarily signed onto the basic tenets of 'gender neutrality', they voluntarily gave up their legendary reputation for impartiality and resigned from the gender-specific world the rest of their countrymen live in.

Thus, it is impossible for a judge who has agreed to exterminate the male pronoun from all court documents and to erase all gender nuances from his written and spoken opinions NOT to be biased when a gender-specific case comes before him. He is incapable of

reversing himself and, given the canon of impartiality, he is not competent to hear it. A rooster will no more lay an egg than the federal judiciary's immoderate zeal for the homosexual and feminists' small but schizoid list of goals will produce an impartial judge no matter how long the intercourse.

9. Res Ipsa Loquitur

Justice, like betrayal, is a seamless garment. It is impossible to tell where it begins and where it ends. Federal judges, penetrated with that metempsychosis so dear to the homosexual and feminist mind, might think that what goes around might not come around. Petitioners who were brought up when the Constitution of this country was in good working order, know that justice is the ripened fruit of past conduct which even federal judges must eat.

The question, therefore, upon which this petition is based, viz., whether gender neutrality is, in fact, gender bias, cries out to be faced squarely. Not when the citizens of this country are pitched into the ditch, but now, or at the outside, extremely soon.

Accordingly, this Court should gather its plenipotentiary powers and decide this question on the merits. To deny that gender neutrality resulted in articulable injustice to Petitioners and is a shattering legal precedent, lethal to liberty, is to bury your venerable heads in some very deep sand. It is the mental equivalent of praying out loud: Great God, grant that twice two be not four.

Not even God can do that.

Respectfully submitted, pro se

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UNITED STATES COURT OF APPEALS
For the First Circuit

No. 06-1806

Peter F. Tinkham, et al.,
Plaintiffs, Appellants,

v.

Doreen R. Kelly, et al.,
Defendants, Appellees.

Before

Boudin, Chief Judge,
Torruella, Circuit Judge,
Stahl, Senior Circuit Judge,
Lynch, Lipez, and Howard, Circuit Judges.

ORDER OF COURT
Entered: July 10, 2007

The petition for rehearing having been denied by the panel of judges who decided the case and the petition for rehearing en banc having been submitted to the active judges of the Court and a majority of the judges not having voted that the case be heard en banc, it is ordered that the petition for rehearing and the petition for rehearing en banc be denied.

By the Court
Richard Cushing Donovan, Clerk
By: Margaret Carter, Chief Deputy Clerk

UNITED STATES COURT OF APPEALS
For the First Circuit

No. 06-1806

Peter F. Tinkham, et al.,
Plaintiffs, Appellants,
v.
Doreen R. Kelly, et al.,
Defendants, Appellees.

Before

Torruella, Circuit Judge,
Stahl, Senior Circuit Judge
and Howard, Circuit Judge

JUDGMENT

Entered: April 11, 2007

We have reviewed the parties' briefs and/or memoranda and the record on appeal. We conclude that, although the district court's judgment of dismissal was "without prejudice", it evidenced sufficient indicia of finality so that we may properly assert appellate jurisdiction over it.
See, e.g., Acevedo-Villalobos v. Hernandez, 22 F.3d 384, 389 (1st Cir. 1994)(holding that a dismissal of a complaint without prejudice that does not expressly grant leave to amend is a final decision from which

a timely appeal may be taken).

Turning to the merits, the district court granted the appellees' motions to dismiss on the ground that the complaint failed to comply with FRCP 8(a)(2). We review such a dismissal only for abuse of discretion. Kuehl v. FDIC, 8 F.3d 905, 908 (1st Cir. 1993). There was no abuse of discretion here.
The appellees' motion for summary disposition is granted.
The judgment of the district court entered on March 20, 2006 is affirmed. Loc. R. 27.0(c).

By the Court:

Richard Cushing Donovan, Clerk
By Margaret Carter
Chief Deputy Clerk

Certified and issued as Mandate
Under FRCP 41
Richard Cushing Donovan, Clerk

_____
Deputy Clerk
Date: 07/20/07

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Peter Tinkham,
Juliet Alexander,
Samantha, Tinkham
Plaintiffs,

C.A. No. 05-10470-MLW

v.

Doreen R. Kelly, et al.,
Defendants.

MEMORANDUM AND ORDER

WOLF, D.J. March 19, 2006

The Court has considered the attached February 6, 2006 Report and Recommendation of the Magistrate Judge, pro se plaintiffs' Peter Tinkham and Juliet Alexander's objections to it, and the replies of the defendants affiliated with Sharon Public Schools (the 'Sharon Schools defendants") and of the defendants affiliated with the Department of social Services (the "DSS defendants"). The Report and Recommendation is thorough, well-reasoned, and hereby adopted and incorporated in this Memorandum.

As explained by the Magistrate Judge, plaintiffs' motions for default judgments are not meritorious. The Sharon Schools defendants timely filed their motion to dismiss pursuant to FRCP 41(b), based on

the plaintiffs' failure to satisfy the requirement of FRCP 8(a)(2) that the complaint include a "short and plain statement of the claim showing that the pleader is entitled to relief." A motion to dismiss is a valid defense to a motion for default under FRCP 55. See FRCP 12(a)(4)(A); Kuehl v. FDIC., 8 F. 3d 905, 908 (1st Cir. 1995)

The DSS defendants' motion to dismiss was not timely filed. However, as the Magistrate Judge explained, the DSS defendants tried to contact the plaintiffs to offer them a hearing before DSS This explains the delay in the filing of their motion to dismiss. While a failure to make a timely request to the court for more time to respond to the complaint would not always be excused by such an effort, it is sufficient in the instant case.

As the Magistrate Judge describes, it would be impossible for the Sharon Schools or DSS defendants to respond properly to the plaintiffs' long, rambling complaint. Even recognizing that the pleadings of pro se parties must be liberally construed, the complaint in this case fails to provide fair notice of claims upon which relief could be granted. See Moore v. United States, 193, F.R.D. 647, 650-51 (N.C. Cal 2000) This conclusion is not qualified by any of the new arguments in Plaintiffs' Motion to Enlarge their Opposition to the DSS defendants' Motion to Dismiss.

Moveover, the Magistrate Judge correctly concluded that while Peter Tinkham and Juliet
Alexander may represent themselves, because neither is a lawyer neither can represent Samantha Tinkham, who is also named as a plaintiff in this case.

See Cheung v Youth Orchestra Found. of Buffalo, Inc., F. Supp. 1033, 1039 (D. Mass 1994)

Accordingly,, this case is being dismissed without prejudice. For the reason described by the Magistrate Judge, Mr. Tinkham and Ms Alexander may wish to invoke the DSS ADMINISTRATIVE REVIEW PROCESS if they want to minimize the risk that any future, properly pled claims that they have been deprived of procedural due process will be dismissed. They will also Have TO OBTAIN COUNSEL to represent Samantha Tinkham if they wish to have claims pursued on her behalf.

After the Report and Recommendation was issued, plaintiffs moved for the imposition of sanctions under FRCP 11. They did not, however, provide their adversaries the 21-days notice of their intent to file the motion for sanctions if the challenged pleadings were not corrected or withdrawn. See FRCP 11(b)(1)(a); 5A Charles Alan Wright & Arthur Miller, Federal Practice and Procedure, section 1227 (3d ed. 2004) Therefore the request for sanctions is being denied.

Accordingly, it is hereby ORDERED that:

1. The Sharon Schools defendants' Motion to Dismiss (Docket No. 19) is ALLOWED without prejudice.

2. The DSS defendants Motion to Dismiss (Docket No. 53) is ALLOWED without prejudice.

3. The plaintiffs' Motion for Entry of Default Judgment against the Sharon School defendants

(Docket No. 25) is DENIED.

4. The plaintiffs' motions for entry of default judgment against the individual DSS defendants (Docket Nos. 26,27,28,29,30 and 31) are DENIED.

5. The plaintiffs' Motion for Sanctions (Docket No. 78) is DENIED.

6. The plaintiffs Motion to Enlarge their Opposition to the DSS Defendants' Motion to Dismiss (Docket No. 79) is ALLOWED

7. The Sharon Schools defendants' Assented to Motion for Extension of Time to File Response/Reply to Objection to Report and Recommendation (Docket No. 83) is ALLOWED

_____

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05-CV-10470-MLW

Peter F. Tinkham, et al.,
Plaintiffs
v.
Doreen R. Kelly, et al.,
Defendants

REPORT AND RECOMMENDATION

ALEXANDER, M.J.

Analysis
Defendants' Motions to Dismiss

The DSS defendants asseverate that the plaintiffs' complaint should be dismissed for failure to comply with the FRCP for two reasons: First that Mr. Tinkham and Ms Alexander may not act as PRO SE representatives for Samantha, their minor daughter; and second, that the plaintiffs' comlaint fails to meet the requirements of FRCP 8(a) The Court finds both assertions well made, but because the second reason compels the Court's ultimate recommenda- tion that the entire complaint be dismissed without prejudice, it is to that assertion that the Court turns first.

FRCP 8(a)
All of the defendants recognize that pro se plaintiffs may be held to a more lenient standard of pleading than plaintiffs represented by counsel. This does not

mean, however, that pro se complaints are held to no standard at all. The controlling rule requires a short, plain statement of the claim showing that the pleader is entitled to relief. (FRCP 8(a)(2) Complaints which ramble, which needlessly speculate, accuse and condemn, and which contain circuitous diatribes far removed from the heart of the claim do not comport with these goals and this system; such complaints must be dismissed.

Complying with procedural law includes filing a complaint that contains a "short and plain statement of the claim showing that the pleader is entitled to relief. Even under a lenient application of this rule, the plaintiffs' complaint fails to meet the rule's requirements. Although the complaint does not lack volume, it does lack clarity. Even with the Court's best efforts, it is impossible to "intuit" all of the plaintiffs' specific claims. This Court therefore RECOMMENDS that the plaintiffs'complaint be DISMISSED WITHOUT PREJUDICE and that the plaintiffs be granted leave to amend their complaint.

Representation of Samantha Tinkham (See original R&R in Appellate file)

Exhaustion of Remedies

Finally, the Court addresses one other issue, raised by the DSS defendants that may ultimately dispositive of some, if not all, of Mr. Tinkham and Ms Alexander's claims. To the extent that the complaint asserts violations of plaintiffs' constitutional rights, including claims that their due process rights were violated, those claims may be

barred if Mr. Tinkham and Ms. Alexander failed to exhaust certain state court remedies. Plaintiffs who do not avail themselves of available state procedural remedies may not complain of a violation of procedural due process. We can not be sympathetic to a party who elects to forego the hearing provided him and then complains he received none. Where a sufficiently timely hearing is available to the plaintiffs, they cannot bootstrap themselves into federal court by failing to seek it.

The DSS defendants assert that the plaintiffs have failed to invoke the administrative review process and comprehensive judicial review statutorily available to all persons aggrieved by DSS decisions.
The Court's concern with the exhaustion issue is whether DSS did, in fact, offer the plaintiffs a timely hearing. The DSS defendants suggest that the plaintiffs refused to schedule a DSS fair hearing. At the January 19, hearing, however, plaintiffs averred that they waited 940 days for a response to their request for a hearing. Although DSS did, eventually, schedule a hearing, it appears that it was not scheduled until after the plaintiffs commence the extant suit.

If the plaintiffs, as they seem to be asserting, sought a DSS fair hearing and DSS failed to provide one in a timely manner, that failure may constitute a deprivation of plaintiffs' due process rights. On the other hand, although DSS did schedule a hearing for December 2005, the plaintiffs declined to attend, something that may ultimately work to the plaintiffs' disadvantage. The problem at this stage is that it's not entirely clear what the plaintiffs constitutional

claims are and, furthermore, whether, if DSS did fail to hold a hearing in a timely matter, this has any effect on the exhaustion issued. The Court addresses this issue merely as a way to try to assist the parties in their further handling of the case. It has no bearing on the Court's recommendation to the District Court regarding dismissal.

Motions for Entry of Default Judgment (See original R&R in Appellate file)

CONCLUSION

For the foregoing reasons, the Court RECOMMENDS that the District Court ALLOW the defendants' motions to dismiss WITHOT PREJUDICE to the plaintiffs amending their complaint with a lawyer to represent Samantha and perhaps a lawyer to represent themselves. Additionally, the Court RECOMMENDS that the District Court DENY the plaintiffs' motions for default judgment.

SO ORDERED.

Date: 2/6/06 /s/ Joyce London Alexander

United States Magistrate Judge

GENERAL LAWS OF MASSACHUSETTS
Prepared Under The Direction Of The General Court

Volume 8 Chapters111-119
2002 Official Edition

119:40-51. Repealed, 1954, 646, Sec.1

119:51A Injured children; reports

Section 51A. Any physician, medical intern, hospital personnel engaged in the examination, care or treatment of persons, medical examiner, psychologist, emergency medical technician, dentist, nurse, chiropractor, podiatrist, optometrist, osteopath, public or private school teacher, educational administrator, guidance or family counselor, day care worker, or any person paid to care for or work with a child in any public or private facility: ....social worker, foster parent, firefighter or policeman ....priest, rabbi, ...accredited Christian Scientist or person employed by a church or religious body to supervise, educate, coach, train or counsel a child on a regular basis, who, in his professional capacity shall have reasonable cause to believe that a child under eighteen years of age is suffering physical or emotional injury resulting from abuse inflicted upon him which causes harm or substantial risk of harm to the child's health or welfare.....shall immediately report such condition to the department by oral communication and by making a written report within forty-eight hours. .....Any such hospital personnel preparing such report may take or cause to be taken, photographs of the areas of trauma visible on a child who is the subject of such report

without the consent of the child's parents or guardians.....Any such person so required to make such oral and written reports who fails to do so SHALL be punished by a fine of not more than one thousand dollars. Any person who knowingly files a report of child abuse that is frivolous shall be punished by a fine of not more than one thousand dollars.

Said reports shall contain the names and addresses of the child and his parents or other person responsible for his care, if known; the child's age; the child's sex; the nature and extent of the child's injuries, abuse, maltreatment, or neglect; the circumstances under which the person required to report first became aware of the child's injuries, abuse, maltreatment or neglect; whatever action, if any, was taken to treat, shelter, or otherwise assist the child; the name of the person or persons making such a report; and any other information which the person reporting believes might be helpful in establishing the cause of the injuries; the identity of the person or persons responsible therefore; and such other information as shall be required by the department.

.....In addition to those persons required to report pursuant to this section, any other person may make such a report if any such person has reasonable cause to believe that a child is suffering from or has died as a result of such abuse and neglect. No other person making such report shall be liable in any civil or criminal action by reason of such report if it was made in good faith; ....

No employer of those persons required to report pursuant to this section shall discharge, or in any manner discriminate or retaliate against any person who in good faith makes such a report....

Within sixty days of the receipt of a report by the department from any person required to report, the department shall notify such person in writing of its determination of the nature, extent and cause or causes of the injuries to the child, and the social services that the department intends to provide to the child or his family.

Any privilege established by sections 135A and 135B of chapter 112 or by sections 20A and 20B of chapter 233, relating to confidential communications shall not prohibit the filing of a report pursuant to the provisions of this section or the provisions of section 24.

119:51B Physically or emotionally injured children: duties of department; disclosure of information to department.

Section 51B. The department shall:

1) investigate and evaluate the information reported under section 51A. Said investigation shall commence within two hours of initial contact and be completed within twenty-four hours if the department has reasonable cause to believe the child's health or safety is in immediate danger from further abuse or neglect. Said investigation and evaluation shall commence within two working days of initial contact and be completed within ten

calendar days for all other such reports. The investigation shall include a home visit at which the child is viewed, if appropriate, a determination of the nature, extent and cause or causes of the injuries, the identity of the person or persons responsible therefore, the name, age and condition of other children in the same household, an environment and all other pertinent facts or matters.
Such determinations and evaluations shall be in writing;

2) evaluate the household of the child named in the report and make a written determination of the risk of physical or emotional injury to any other children in the same household;.....

3) take a child into immediate temporary custody if the department has reasonable cause to believe that the removal of the child is necessary to protect him from further abuse or neglect;.....

5) offer to the family of any child which it has reasonable cause to believe is suffering from any of the conditions described in the report appropriate social services to prevent further injury to the child, to safeguard its welfare and to preserve and stabilize family life whenever possible. If the family declines or is unable to accept or to participate in the offered services, the department, or any person may file a petition pursuant to section 24 requesting an appropriate order with reference to care and protection of the child.

6) file in the central registry established under section 51F a written report containing information sufficient to identify each child whose name is reported pursuant to section 51A or 51B. A notation shall be sent to such central registry whenever further reports on each such child are filed with the department. If the department determines during the initial screening period of an investigation that said report under section 51A is frivolous, or other ABSOLUTE determination that abuse or neglect has NOT taken place, then said report shall be declared "allegation invalid". If such reports are declared 'allegation invalid", the name of the child, or the names of his parents or guardian or any other person relevant to the report, shall NOT be placed in the central registry, nor under any computerized program utilized in the department.

10) No provision of chapter 66A, section 135 of chapter 112, sections 51 E and 51Fof this chapter or any other provision of law, shall prohibit said department of social services from transmitting a copy of said reports made under the provisions of said sections 51A and 51B to any of said departments or from conducting coordinated activities and sharing information with any of said departments as herein provided, or from having its employees testify at administrative hearings held by any of said departments in connection with matters about which said department of social services has provided notice to any of said departments under this section.

119:51F Central registry of information; confidentiality; penalties

Section 51F. The department shall maintain a central registry of information sufficient to identify children whose names are reported pursuant to section 51A or 51B.....Nothing in this section shall prevent the department from keeping information on unsubstantiated reports to assist in future risk and safety assessments of children and families.

Notwithstanding any privilege created by statute or common law relating to confidential communications or any statute prohibiting the disclosure of information, any person required to make a report pursuant to section 51A who has information which he believes might aid the department in determining whether a child has been abused or neglected pursuant to an investigation under this section SHALL, if requested by the department, disclose such information relevant to the specific investigation to the department. Such statutory or common law privileges shall not preclude the admission of any such information in any civil proceedings concerning abuse or neglect of a child, placement or custody of a child.

No person required to provide such information pursuant to this section or permitted to disclose information pursuant to chapter 5A of chapter 119A shall be liable in any civil or criminal action for providing such information.

Amendments to the Constitution of the United States

Amendment 1
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES.

Amendment 4
THE RIGHT OF THE PEOPLE TO BE SECURE IN THEIR PERSONS, HOUSES, PAPERS, AND EFFECTS, AGAINST UNREASONABLE SEARCHES AND SEIZURES, SHALL NOT BE VIOLATED, AND NO WARRANTS SHALL ISSUE, BUT UPON PROBABLE CAUSE, SUPPORTED BY OATH OR AFFIRMATION , AND PARTICULARLY DESCRIBING THE PLACE TO BE SEARCHED AND THE PERSONS OR THINGS TO BE SEIZED.

Amendment 5
No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; NOR SHALL BE COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF, NOR BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY WITHOUT DUE PROCESS OF LAW; nor shall private property be taken for public use without just compensation.

Amendment 6
In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment 9
The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage OTHERS RETAINED BY THE PEOPLE.

Amendment 10
The powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States respectively, OR TO THE PEOPLE.

Amendment 14
Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS.

JURISDICTION
(excerpt from appellate brief)

By virtue of 28 U.S.C.C., section 1343, District Courts have original jurisdiction to entertain civil rights actions authorized by law to be commenced by any person to redress the deprivation of constitutional rights. Its purpose is to confer federal jurisdiction for the vindication of those rights and, to achieve this purpose, it is to be given a broad application.

To obtain jurisdiction under 28 U.S.C.A., section 1343(3)(a), for a suit under 42 U.S.C.A., section 1983, Appellants Peter Tinkham and Juliet Alexander raised substantial federal questions concerning violations of constitutional rights under color of state law, it itself a federal question, and they include violations of the right to privacy, (1), to be free from unreasonable search and seizure, (2), freedom of speech,(3), and due process. (4)

28 U.S.C.A., section 1343(3)(a), provides: The District Court shall have original jurisdiction of any civil action authorized by law to be commenced by any person to redress the deprivation under color of any state law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

Appellants' claims brought under 42 U.S.C.A., section 1983, can be and are also brought under 28 U.S.C.A., section 1331, without regard to the limitations of section 1343(3)(a), although section 1983, all by itself, reaches

all Defendants in this case because all carry the badge of authority and represent the state in some capacity whether they acted in accordance with their authority or misused it.

As to DSS Defendants' objection, allowed by the District Court when he affirmed their Motion to Dismiss in its entirety, that jurisdiction is barred by a Domestic Relations Exception, it would be difficult to conceive of a case less concerned with domestic relations as defined in their motion, viz., divorce and child custody cases along with the assertion that the Massachusetts Department of Social Services possesses a special expertise in the area of family. Unless, of course, they mean the agency's expertise in home invasions without warrants, (5); or the vigor with which the institution of the family is attacked by its employees, (6); the comprehensive nature of their anti-parent sentiments, (7); and the number of constitutional amendments going down for the count under their expert supervision. (8).

The only domestic expertise this agency possesses is the flagrant abridgement of domestic freedoms, sacred to liberty, by state workers under the color of law. Appellants who do not wish to use any more of their allotted pages than necessary in addressing this issue of jurisdiction as requested by this Court, rest on their Memorandum in Opposition where this subject is argued more fully, (9), with supporting cases. (10). Ditto the objections to Failure to Allege Standing Injury, (11), Failure to Exhaust Administrative Remedies, (12); and Failure to State a Claim, (13), which all bear on the issue of jurisdiction.

Statement of Facts
(appellate brief pages 8,9,10)

1. In March, 2001, Juliet Alexander and Peter Tinkham removed their daughter, Samantha, aged 10, from her public, elementary classroom for grave medical reasons, one of which was the sudden onset of anorexia, on the advice and recommendation of their pediatrician. (1)

2. This elicited the customary retaliation from school officials when confronted with a physician ordered home placement. Under Massachusetts law, they were now required to provide educational services equal to those in the classroom as long as the physician deemed it medically necessary. (2) This they had no intention of doing. (3)

3. Instead, they intended to pre-empt the home placement by corralling Samantha into the category of special education which meant, among other things, her parents would no longer have any say in where she was educated and the influence and the interference of any physician would be drastically limited. (4)

4. After preliminary blunders, like issuing ultimata and threatening their daughter with truancy charges, School Defendants recognized that the law on special education evaluation had been clarified. Now, they would need parents' voluntary consent to proceed with their plan. (5) It is noteworthy that Sharon was the losing party in the case that did the clarifying. It apparently took them a few months to get with the new program. (6)

5. In any event, School Defendants shortly got down to the business of acquiring parents' consent without letting them know the legal ramifications of that consent, viz., once parents consented to the initial proposal for evaluation, their right to refuse consent to any education placement the school determined for their child vanishes and they could be compelled to consent thereafter. (7)

6. Secrecy as to the legal consequences of consent was the lynchpin of the enterprise. Otherwise, parents might hire an attorney to investigate the matter, or, worse still, discover on their own that School Defendants intention was not to promote any special expenditure on the education of Samantha, but to prevent it. (8)

7. Juliet Alexander and Peter Tinkham, however, who had been foster parents in a previous life to a series of special needs children, had no intention of consigning their gravely ill child to the emotional and intellectual pandemonium they already knew passed for special education in the Town of Sharon. (9)

8. Thus, School Defendants' RICO campaign to obtain consent from parents who would not give it commenced. The more School Defendants schemed to compel Juliet Alexander and Peter Tinkham to capitulate, efforts which included depriving Samantha of over 900 hours of instruction over the course of two years, the more they were determined to protect her interests. (10)

9. The flash point to the controversy occurred on February 27, 2002, when five School Defendants got

together and fabricated documents purporting to show Juliet and Peter were dark, humorless, child molesters who neglected their daughter medically and deprived her of a normal social life. (11) The charge of denying her the privilege of being a special education student was intentionally made to appear as an afterthought. (12)

10. School Defendants then duly faxed these fake documents to the local DSS supervisor who, the complaint alleges, had been very helpful in persuading other reluctant Sharon parents that special education was an irresistible benefit not to be declined lightly. (13)

11. Up to this point, although Peter and Juliet had experienced the infinite variety of School Defendants' predicate acts as injurious affronts, they attempted to maintain a dignified demeanor as they were repeatedly harassed, hectored, insulted and threatened. (14) After all, they were the grown-ups. What could School Defendants do to really harm them? It was only a matter of time, they reasoned, before they would come to their senses.

12. One defendant did come to her senses, however briefly. In early February, the Director of Pupil Personnel invited herself to the Tinkham home. There she confided to Juliet that she was being forced by Lawyer Mintzer to actually file charges of child abuse against them as opposed to merely threatening them, that she had never done such a thing in her entire educational career and she wasn't about to do it now. "I'm not leaving here without an agreement," she declared. (15)

13. After trying to bribe Juliet to take her daughter out of Public School, the Director reached an agreement whereby the school would provide every hour of legally required instruction that they had not given and parents would have Samantha evaluated at their own expense for any perceived learning disability, agreeing to share the results with the school. (16)

14. This brief spark of sanity and comity was eclipsed four weeks later when parents received a letter, ostensibly written by the Director, repudiating the agreement in the strangest terms. This letter was received on the same day that School Defendants were faxing their malicious accusations to DSS. (17) Interestingly, the Director was not among them and several weeks later, she was no longer employed by the Sharon Public Schools.

15. If Peter Tinkham and Juliet Alexander had no real conception of the malevolence and animus that School Defendants had directed toward them, they had even less concerning the threat that now menaced them from the Department of Social Services. Or, that it was the propensity of this agency to suppress Constitutional rights along with a well-deserved reputation as a child-snatching agency that School Defendants were intending to make use of. (18))

16. First, DSS Defendants threatened them with the removal of their daughter from the family home under police guard if they were not admitted forthwith to conduct their investigation. (19) This warrantless, consentless investigation consisted of imperious demands for private, intimate personal information, (20); berating Juliet and Peter for their incompetent

parenting in front of Samantha,(21); their seizure and search of Samantha behind the closed doors of her bedroom, where they physically examined her and interrogated her with questions concerning sexual molestation by her parents. (22)

17. At the close of this outrage, the investigator exclaimed in reference to the Defendant who had fabricated the three page document inferring abuse, "Why did you ever let that woman into your house?! (23)

18. The DSS supervisor referenced in paragraph#10 of this document, however, was having none of it and she got to work fabricating a physician statement of "support" for a further investigation of Peter and Juliet. (24) With this, she presumed to find them guilty of abuse and neglect, (25); listed them as perverts in the DSS Central Registry, open to the public, (26); and arranged to have the "fair hearing" that Peter had requested on the day their home was invaded, postponed indefinitely. (27)

19. DSS Defendants then proceeded to punish Peter and Juliet for their crime of dissenting from school policy by creating a "service plan" intended to strip them of their privacy, their dignity, and, it they refused to cooperate, their daughter. (28) DSS Defendants colluded with School Defendants during the preparation of this piece of tyranny to add consent to special education to the list of commands. (29)

20. Truly alarmed by these developments, Peter and Juliet hung on until September of 2002 when, convinced that Samantha's education would be irreparably damaged if she remained in the Sharon

Public Schools, they enrolled her in a private, Catholic school where she is now a 9th grade honor roll student. (30)

21. After this was accomplished, which was the secondary aim all along of School Defendants, (31), DSS Defendants offered to close the "case" against Peter and Juliet without ever having stated in a complete declarative sentence why it was opened. (31)

22. In December, 2004, Peter Tinkham received a letter from a DSS Defendant informing him that a "fair hearing" MIGHT be scheduled if they replied in the affirmative by October 8, 2004. Otherwise, the offer would be permanently withdrawn, "assuming you are no longer interested." (32)

OUTLINE OF PLAINTIFFS' ORIGINAL COMPLAINT
(Filed with the District Court on February 15, 2006)

Parties, Jurisdiction, Venue	15 paragraphs
General Statement of Case	19 paragraphs

CLAIM IN CHIEF (RICO)

RICO Pleadings	13 paragraphs
Factual Basis for claims	
Scheme #1	31 paragraphs
Scheme #2	19 paragraphs
Scheme #3	10 paragraphs

FIRST CAUSE OF ACTION

Count 1 against Defendant Kelly	1 paragraph
Count 2 against Defendants Kelly Loud, Doyle	1 paragraph
Count 3 against all School Defendants	1 paragraph
Count 4 against all Defendants	1 paragraph

Total pages 19 Total substantive paragraphs 79

Alternative (under FRCP 15(a)) SECOND CLAIM
(42 U.S.C. sections 1983, 1985, 1986)

42 U.S.C. Pleadings	4 paragraphs
Factual Basis for Claims	22 paragraphs

FIRST CAUSE OF ACTION (1983)

Count 1 against Defendant Hawkes-Sullivan	1 paragraph

Count 2 against Defendant Senges	1 paragraph
Count 3 against Defendant Senges	1 paragraph
Count 4 against Defendant Senges	1 paragraph
Count 5 against Defendant Senges	1 paragraph
Count 6 against Defendant Senges	1 paragraph
Count 7 against Defendant Hawkes-Sullivan	1 paragraph
Count 8 against Defendant Keezell	1 paragraph
Count 9 against Defendant Thomas	1 paragraph
Count 10 against Defendant Thomas	1 paragraph
Count 11 against Defendant Pontes	1 paragraph
Count 12 against Defendant Cohen	1 paragraph
Count 13 against all DSS Defendants	1 paragraph

SECOND CAUSE OF ACTION (1985 (3))

Count 1 against all Defendants	4 paragraphs
Count 2 against Defendants Kelly, Mintzer, Doyle, Verrett, and Alberton	1 paragraph
Count 3 against Defendants Kelly, Loud, Bernheimer, Mintzer and Kyed	1 paragraph

Count 4 against Defendants Kelly, Loud, Mintzer, Bernheimer, Verrett, Kyed and Alberton — 1 paragraph

Count 5 against Defendants Senges and Hawkes-Sullivan — 1 paragraph

THIRD CAUSE OF ACTION (1986)

Count 1 against Defendants Pontes and Jackson — 1 paragraph

Count 2 against Defendants Pontes and Jackson — 1 paragraph

Total pages 13 Total substantive paragraphs 34

ALTERNATIVE (under FRCP 15 (a)) THIRD CLAIM (State Claims)

FIRST CAUSE OF ACTION (Intentional Infliction of Emotional Distress)

Count 1 against all Defendants — 2 paragraphs

SECOND CAUSE OF ACTION (Defamation)

Count 1 against Defendant Kyed — 1 paragraph

Count 2 against Defendant Verret — 1 paragraph

Count 3 against Defendant Kelly — 1 paragraph

Count 4 against Defendants Kyed, Kelly, Verret — 3 paragraphs

THIRD CAUSE OF ACTION (Educational Malpractice)

Count 1 against Defendants Kelly, Mintzer, Loud, Doyle, Bernheimer and Kyed	2 paragraphs

FOURTH CAUSE OF ACTION (Declaratory and Injunctive Relief)

Count 1 (concerning unconstitutional statute)	1 paragraph
Count 2 (concerning unconstitutional DSS policy and procedure)	2 paragraphs
Count 3 against all DSS Defendants	1 paragraph

FIFTH CAUSE OF ACTION (Pendant Jurisdiction/ Additional State Claims)

Count 1 against all Defendants	1 paragraph

Total pages 9 Total substantive paragraphs 15

Plaintiffs Original Complaint
(Filed March 7, 2005)
Fourth Cause of Action
(Declaratory and Injunctive Relief)

Count One

Plaintiffs allege:

219. That chapter 119, sections 51A and 51B of the Massachusetts General Laws, on their face, and as applied to plaintiffs, violate the Due Process and Equal Protection Clauses of the 5th and 14th Amendments in the following particulars:

a) They are so vague, overbroad and indefinite that persons of common intelligence must guess as to their meaning and differ as to their application.

b) They allow for the inference of an irrational presumption of guilt in a manner which contradicts the State's primary obligation to establish proof beyond a reasonable doubt.

c) They are not drawn with sufficient clarity to inform anyone of the actual conduct sanctioned.

d) They do not possess the degree of certainty required for a criminal law (and child abuse is a criminal offense) to pass constitutional muster in that it forces an individual to speculate at peril of losing his children or his liberty whether or not his conduct is prohibited.

e) They constitute, in fact, a legislative scheme that, as fleshed out by the policies and procedures of

their creature agency, the Massachusetts Department of Social Services, authorizes manifold constitutional depravities including, but not limited to, the unfettered use of the general warrant on the flimsiest of pretexts.

f) They delegate basic questions of guilt or innocence to bureaucrats for resolution on an ad hoc basis with the attendant certainties of arbitrary and discriminatory application.

g) They provide for no acceptable or ascertainable standards for a trier of fact to determine guilt or for the imposition of criminal sanctions should their victim actually have been fortunate enough to be granted a bona fide trial in a competent Court with authority to act.

Count Two

221. That the official policies and procedures of the Massachusetts Department of Social Services on their face, and as applied to Plaintiffs, are a menace to society and, when employed against citizens, constitute an administrative Bill of Attainder in the following particulars:

a) They authorize the infliction of punishment against 'reported" persons without a judicial trial and all of the constitutional protections of a judicial trial.

1. Their victim is publicly named.
2. A recitation of their victim's activities deemed reprehensible is publicly made.
3. Their victims' guilt is publicly declared.

4. Judgment and verdict are summarily imposed

5. Punishment, either absolute or conditional, is prescribed.

222. That the indiscriminate sweep of the Massachusetts Department of Social Services' mandate is constitutionally intolerable and that this agency, engaged in the often competitive business of ferreting out purported crime, has established official and procedures for its employees that do not conform to even minimal constitutional standards in the following particulars.

a) They authorize employees to act on information clearly deficient to meet even the constitutionally vacuous threshold of the above referenced statutes.

b) They authorize employees to initiate quasi-police investigations to search for the fruits and instrumentalities of a crime they do not have to believe had actually been committed.

c) They authorize employees to conduct warrantless and consentless searches and seizures resulting in the compulsory production of information from their victims, designed to establish a criminal charge against them without any of the procedural safeguards imposed upon all other law enforcement agencies.

d) They do NOT provide for their victim to receive at any stage of their preposterous proceedings a written notice specifying, with particularized facts, the nature of the offense charged.

e) They authorize employees, who cannot establish guilt by evidence freely and independently secured, to resort to fraud, manipulation and other exercises of bureaucratic power, setting in motion a series of "official" actions designed to harass and coerce their victims into compliance.

f) They authorize these same employees to perform the constitutionally incompatible functions of prosecutor, trier of fact, sentencing judge, appeals court and prison warden.

g) They authorize employees to provide or suspend, as the exigencies of their cases demand, certain "remedies" for redressing the above-referenced constitutional indignities, (should their victim regain h is balance long enough to recognize them) that are grossly inadequate in form and substance.

These "remedies" are, in fact, merely bogus window dressing designed to decorate or to obscure the conduct of an agency whose illegitimate reach dwarfs its arguably permissible activities. A "Fair Hearing" postponed for more than 940 days is not a remedy in any sense of the word for its administratively and constitutionally deranged behavior.

COUNT THREE

224. That Department of Social Services Defendants, according to the custom and institutionalized practices of their employer agency"

a) Acted on information clearly deficient to meet

even the unconstitutionally vacuous thresholds of the Criminal statutes, chapter 119, sections 51A and 51B.

b) Conducted a warrantless and consentless search for the fruits and instrumentalities of a crime they never had any reasonable cause to believe had been committed, a crime that, if convicted of it, Plaintiffs could face life imprisonment.

c) Violated every principle of both liberty and justice to say nothing of common decency by their custodial interrogation of Plaintiffs and their child.

d) Punished Plaintiffs by listing them as "perpetrators" in their Central Registry, clearly violating Plaintiffs' constitutional rights, viz.,

1. The right to be given detailed written notice of the allegations or charges against them.

2. The right not to be punished until tried, convicted and sentenced by a Court with authority to act.

e) Attempted to coerce and intentionally deceive and did coerce and deceive Plaintiffs in April 2002 by describing Massachusetts Department of Social Services "post support" visits to Plaintiffs' home as "conversations" when they were intended to be and were, in fact, adversarial proceedings of a quasi-criminal investigation.

f) Deep-sixed Plaintiffs' March 2002 request for a "Fair Hearing" using the bogus rationale that the

agency was understaffed.

g) 940 days later informed Plaintiffs by a letter mailed to the wrong address that their "Fair Hearing" would be denied if they did not phone Defendant Keezall within 8 days.

FIFTH CAUSE OF ACTION
(Pendant jurisdiction)

Prayer for Declaratory Relief

Wherefore, Plaintiffs pray this Court to declare Chapter 119, sections 51A and 51B of the Massachusetts General laws and the relevant policies and procedures of it creature agency, the Massachusetts Department of Social Services, in their current form and operation, unconstitutional and enjoined.

UNITED STATES DISTRICT COURT
District of Massachusetts

Peter Tinkham
v. Civil Action No. 05-10470
Doreen R. Kelly

PLAINTIFFS' MOTION TO STRIKE DEFENDANTS' NOTICE OF A FAIR HEARING

Plaintiffs Peter Tinkham, Juliet Alexander and Samantha Tinkham move to strike the Notice of a Fair Hearing filed by DSS Defendants through their counsel, Stephen Dick, AAG, as false, misleading and a scandalous fraud upon the Court. As grounds, therefore, Plaintiffs state:

1. This notice states: "Plaintiffs originally requested a Fair Hearing sometime before March 19, 2003." This statement, while technically correct, was made to deliberately mislead the Court about the amount of time that has elapsed between Plaintiffs' original request, March 14, 2002, and their contrived, ex post facto offer of a Fair Hearing on December 22, 2005, a lapse of 1365 days.

2. Defendants follow up this false statement with a deliberate lie, also manufactured to bolster their contention that Plaintiffs have failed to exhaust their administrative remedies in this case, a lie that is regrettably repeated in their Motion to Dismiss Under Rule 12(b). This lie consists of the following assertion in the body of the notice on Page 2, viz., "Complaint EXHIBIT M, DSS 3/19/2003 Acknowledgment of

Plaintiffs' Timely Fair Hearing Request." Attorney Dick has the impertinence to change the date on this document, which was an exhibit in Plaintiffs' Complaint, and the further impertinence to claim in his footnote to this foolish statement that, viz., "The letter is mis-dated 2002."

3. If Attorney Dick has actually conferred with Plaintiffs as he has falsely asserted in his Rule 7.1 (A)(2) Certification, they could have spared him the indignity of misleading the Court in both his affidavit and in his Notice of a Fair Hearing, to say nothing of sparing themselves and the Court the tedium of disposing of the contention asserted in DSS Defendant's Motion to Dismiss Under Rule 12 (b), that Plaintiffs have refused to exhaust their administrative remedies.

4. The lynchpin to establish this affirmative defense of failure to exhaust is to first insinuate that Plaintiffs were incompetent to look out for their own interests which Attorney Dick has alleged in his affidavit and then to narrow the chasm that exists between Plaintiffs' original request for a Fair Hearing and either Defendant Keezell's September 2004 letter or Attorney Dick's Notice of a Fair Hearing in December 2005. This preposterous attempt is soundly contradicted by the incontrovertible evidence in this case, clearly alleged in Plaintiffs' Complaint and attached to this Motion to Strike.
Therefore, Plaintiffs' Motion to Strike should be granted.

Respectfully submitted, November 5, 2005,

/s/ Peter Tinkham, Pro se